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SAMUEL L. KAY, CLERK
U. S. District & Bankruptcy Court
Southern

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION
Case No. 2:00-0020

In the Matter of the Complaint of
Shelly Materials, Inc. as Owner of the
M/V DIRK TAYLOR, Official No. 608017,
for Exoneration From or Limitation of Liability

**WILLIAM JOSEPH DAPPER AND KATHY JENNE'S
RESPONSE TO SHELLY MATERIALS, INC.'S REPLY TO DAPPER AND JENNE'S
REPLY TO SHELLY MATERIALS, INC.'S MOTION TO STRIKE JURY**

Now come William Joseph Dapper and Kathy Jenne, by and through counsel, and respectfully requests that this Court deny Shelly Materials Inc.'s Motion for to Strike Jury. The basis for this motion is that neither the Constitution of the United States, nor any federal law precludes the use of a jury in admiralty claims brought under maritime law and accordingly, Dapper and Jenne may rightfully request, and this court may rightfully grant, Dapper and Jenne's request for a jury trial. A Brief in Support is attached hereto and incorporated by reference herein.

RESPECTFULLY SUBMITTED, this 2 day of April, 2001.

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BRIEF IN SUPPORT

I. LAW AND ARGUMENT

As clearly stated in Dapper and Jenne's Reply to Shelly Materials Inc.'s Motion to strike Jury, neither the constitution of the United States, nor any federal law precludes the claimants from requesting a jury trial in the case *sub judice*. Fitzgerald v. United States Lines Company (1963), 374 U.S. 16, 20. See also: Pickle v. Char Lee Seafood, Inc. (1999), 174 F.3d 444; Vodusek v. Bayliner Marine Corp. (1995), 71 F.3d 148. Further, the Supreme Court of the United States has held that Congress has provided that suits under the Jones Act may be tried by a jury. O'Donnell v. Great Lakes Dredge & Dock Co. (1943), 318 U.S. 36, 43.

The instant case is predicated upon both negligence and admiralty law through the Jones Act. Dapper and Jenne's Complaint and Third Party Complaint adequately outline the negligence claim in this case. Consequently, as stated by the United States Supreme Court in the cases cited above, since Congress in the Jones Act has declared that the negligence part of the claim shall be tried by a jury, **this Court would not be free, even if it wished, to require submission of all the claims to the judge alone.** Moreover, Congress has declared that suites under the Jones Act may be tried by a jury. Therefore, the jury, a time-honored institution in our jurisprudence, is the only tribunal competent under the present congressional enactment to try all the claims.

It should also be noted that Shelly Materials, Inc., has repeatedly questioned the status of William Dapper as a seaman while onboard the Dirk Taylor. Dapper

and Jenne's Response to Shelly Materials, Inc.'s Motion for Partial Summary Judgment establishes William Dapper's status as a seaman while onboard the Dirk Taylor. However, the burden of deciding such status "is a question of fact for the jury." McDermott International, Inc. v. Wilander (1991), 498 U.S. 337, 355. See also: Chandris, Inc. v. Latsis (1995), 515, U.S. 347, 369. It is the responsibility a jury, not a judge, to decide if William Dapper was a seaman at the time of his injury. Therefore, Shelly Materials Inc.'s Motion to Strike Jury should be denied by this Court.

II. CONCLUSION

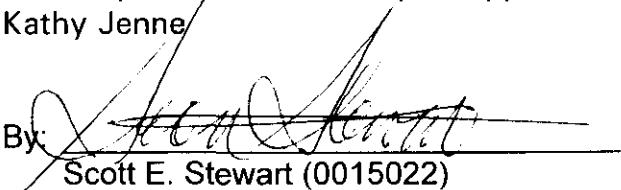
WHEREFORE, William Dapper and Kathy Jenne, respectfully request that this Court deny Shelly Materials Inc.'s Motion to Strike Jury.

RESPECTFULLY SUBMITTED, this 2 day of April, 2001.

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PROOF OF SERVICE

The foregoing reply brief has been served, by regular U.S. mail, on this day of April, 2001, upon:

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